IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07-03-2005

Coram:

The Honourable Mr. MARKANDEY KATJU, Chief Justice
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

W.A. No.3813 OF 2004

Veerasamy Udayar :: Appellant

:versus:

1. The District Collector
Ramasamy Padayatchiar District
(Villupuram District) Villupuram

2. The Special Tasildhar
(Adidravidar Welfare)
Ulundurpet :: Respondents

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Appeal under Cl.15 of the Letters Patent against the order dated 26-4-2004 in W.P. No.4227 of 1997.

For Appellant :: Mr. G. Rajan
For Respondents :: Mr. V. Raghupathy
Govt. Pleader

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JUDGMENT

(Delivered by the Hon'ble The Chief Justice)

This writ appeal has been filed against the impugned order dated 26-4-2004 in W.P. No.4227 of 1997.

2. We have heard the learned counsel for the parties and have carefully perused the impugned order. In paragraph 3 of the impugned order, it has been stated as follows:

> "From the facts narrated above, it is seen that the petitioner has approached this Court much after passing of the award and the lands were distributed to the needy persons."

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Learned counsel for the appellant, however, submitted that the above statement of fact that the petitioner/appellant had approached this Court after the award was given and that the lands have been distributed to the needy persons is factually incorrect. We cannot permit the learned counsel for the appellant to raise this plea before us. It is well-settled by a catena of judgments of the Apex Court that statements of fact recorded in the judgment of a court are ordinarily conclusive and not open to be contradicted in appeal. The Supreme Court in RAM BALI v. STATE OF UTTAR PRADESH [2004] 18 ILD 880 SC observed as follows:

> "It is to be noted that the statement of fact as to what transpired at the hearing, the record in the judgment of the court are conclusive of the facts so stated, and no one can contradict such statement on affidavit or by other evidence. If a party thinks that the happenings in court have been erroneously recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges who have made record to make necessary rectification. That is the only way to have the record corrected. It is not open to the appellant to contend before this Court to the contrary."

In COMMISSIONER OF ENDOWMENTS AND OTHERS v. VITTAL RAO (JT 2004 (10) SC 113) vide paragraph 18, the Supreme Court, after referring to various decisions on this proposition,viz. *Somasundaram Chetty v. Subramanian Chetty* (AIR 1926 PC 136); *Madhu Sudan Chowdhri v. Chandrabati Chowdhrain* (AIR 1917 PC 30); *R. v. Mellor* [1858] 7 Cox CC 454; *King-Emperor v. Barendra Kumar Ghose* (AIR 1924 Cal.257) and *Sarat Chandra Maiti v. Bibhabati Debi* (AIR 1921 Cal.584) held that a statement of fact recorded in the judgment of a court is conclusive and not open to be contradicted in appeal. A Division Bench of this Court, to which one of us (Markandey Katju, Chief Justice) was a party, in W.A. No.85 of 2005 (C. Shanmugam v. Tamil Nadu Housing Board), decided on 31-1-2005, has held that, in these circumstances, the proper course open to the appellant is to approach the very learned single Judge who has passed the impugned order with a proper application for rectification/modification of the order.

3. In the circumstances, we give liberty to the appellant to approach the learned single Judge (Hon'ble Mr. Justice D. Murugesan) with a suitable application praying for rectification/modification of the impugned order dated 26-4-2004 and in the said application the appellant can also point out the subsequent events. If such an application is made, we hope and

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trust that the same will be disposed of by the learned single Judge in accordance with law expeditiously.

4. Learned counsel for the appellant further pleads that the delay in filing the rectification application before the learned single Judge may be condoned. In our opinion, such an application is not an application for review but an application for rectification/modification of the impugned order, which has no limitation.

5. With the above directions, the writ appeal is disposed off. Connected WAMP No.7199 of 2004 is closed.

Jai 07-03-2005

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The District Collector
   Ramasamy Padayatchiar District
   (Villupuram District) Villupuram

2. The Special Tasildhar
   (Adidravidar Welfare)
   Ulundurpet

1 cc to Mr.G.Rajan, Advocate, SR.10537
1 cc to the Govt. Pleader, SR.10656

smk (co)

dv

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